

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:CTM:LN:POSTF-128411-02

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date: Jun 4, 2002

to: Ethelyn McDaniel, Team Leader, LMSB, HMCT 1755  
Patricia Lozano, Team Coordinator, Long Beach POD, LMSB, HMCT 1755

from: Joyce M. Marr, Attorney (LMSB)  
June Y. Bass, Associate Area Counsel (LMSB)

subject: [REDACTED], Inc., formerly known as [REDACTED]

Tax Years: [REDACTED] through [REDACTED], inclusive

TIN: [REDACTED]

Request for Advisory Opinion on Preparation of Forms 872  
Statute of Limitations: September 30, [REDACTED]

**DISCLOSURE STATEMENT**

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This memorandum responds to your request made on May 17, 2002, that we review the two draft Forms 872, Consents to Extend the Time to Assess Tax, for the tax years [REDACTED] through [REDACTED], inclusive, attached hereto. This memorandum should not be cited as precedent.

**FACTS<sup>1</sup>**

The Service is currently examining the consolidated Federal income tax returns of [REDACTED], Inc., formerly known as [REDACTED] (hereinafter "[REDACTED]") [REDACTED], a consolidated return group, for its taxable years [REDACTED] through [REDACTED]

<sup>1</sup>Unless specifically noted, we have relied upon facts presented to us orally and in writing by the Examination Division. Our advice might be different if the facts were different. If the facts which we recite in this memorandum ultimately prove to be inconsistent with your understanding of the facts, please contact this office immediately and do not rely on this memorandum.

█████, inclusive.

From its inception until ██████████ was a wholly-owned subsidiary of ██████████ (██████). The consolidated group ceased to exist in ██████ when the common parent, ██████, transferred its assets to its foreign parent, ██████, and dissolved. Shortly before it was dissolved, the common parent's name was changed from "██████████, Inc." to "██████, Inc."

The remaining members of the ██████ consolidated group during the years ██████ through ██████, inclusive, designated ██████████, Inc. (██████), EIN: ██████████, another member of the consolidated group during the years ██████ through ██████, as designated agent under Treas. Reg. § 1.1502-77(d). Such designation was approved by the former District Director of the Southern California District. ██████ was dissolved in ██████. Thereafter, the remaining members of the former ██████ consolidated group designated ██████████, Inc. (EIN: ██████████), formerly known as ██████████, Inc. (hereinafter ██████), which was a member of the ██████ consolidated group during the taxable years ██████ through ██████, inclusive, to act as the designated agent for the former ██████ consolidated group pursuant to Treas. Reg. § 1.1502-77(d) for such taxable years.

Pursuant to previously executed Form(s) 872, the statute of limitations for the ██████ consolidated group has been extended for the years ██████ to ██████, inclusive, to September 30, ██████.

#### DISCUSSION and RECOMMENDATIONS

Generally, the common parent is the sole agent for each member of a consolidated group, duly authorized to act in its own name, in all matters relating to the tax liability for the consolidated return year. Moreover, the common parent is generally the proper party to sign consents and receive all correspondence. Treas. Reg. § 1.1502-77(a). When, as here, the common parent no longer exists, Treas. Reg. § 1.1502-77(d) provides that the remaining members of the group<sup>2</sup> may designate as a successor agent one of the remaining members (subject to the district director's approval).

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<sup>2</sup> There is an issue concerning who the "remaining members" are. The Service generally takes the position that the "remaining members" are the corporations that were members of the group during the taxable years at issue, less any members that have subsequently gone out of existence.

It is sometimes difficult for the Service to identify the common parent of an affiliated group when there are mergers and other acquisitions. Treas. Reg. § 1.1502-77T, in the case of executing waivers and receiving notices of deficiency, provides for alternative agents and applies if the corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence. Under Treas. Reg. § 1.1502-77T(a)(3), a waiver of the statute of limitations for the former [REDACTED] group can be given by any of the alternative agent corporations referred to in Treas. Reg. § 1.1502-77T(a)(4).

Pursuant to I.R.C. § 1504(b)(3), a foreign corporation, such as [REDACTED], is excepted from the definition of "includible corporation." In addition, since each of [REDACTED]'s former subsidiaries were separately owned by [REDACTED] after [REDACTED]'s dissolution, Treas. Reg. § 1.1502-75(d)(2)(ii) is inapplicable in the instant case and, therefore, Treas. Reg. § 1.1502-77T(a)(4)(iv) does not apply.

Under Treas. Reg. § 1.1502-77T(a)(4)(iii), the alternative agents for a group include "[t]he agent designated by the group under § 1.1502-77(d)." Since [REDACTED] is the agent designated by remaining members of the former [REDACTED] consolidated group under Treas. Reg. § 1.1502-77(d), it can act as the alternative agent of the [REDACTED] consolidated group for the tax years at issue, under Treas. Reg. § 1.1502-77T(a)(4)(iii). If [REDACTED] signs the Forms 872, as an alternative agent under Treas. Reg. § 1.1502-77T(a)(4)(iii), it will bind itself and any remaining members of the [REDACTED] return group for the consolidated tax liability of the [REDACTED] return group for the years [REDACTED] through [REDACTED], inclusive. Therefore, [REDACTED] is the proper party to sign the Forms 872 for the tax years in question.

We suggest the following language be used on the caption line of the Form 872:

[REDACTED] (EIN [REDACTED])  
[REDACTED], formerly [REDACTED]  
[REDACTED] as agent for the [REDACTED] (EIN: [REDACTED])  
[REDACTED], formerly [REDACTED]  
[REDACTED] consolidated group.\*

\*This is with respect to the consolidated federal income tax liability of [REDACTED] (formerly [REDACTED]) (EIN: [REDACTED]) [REDACTED] consolidated group for the group's taxable years ending [date], [date], and [date].

IRM Sub-Subsection 25.6.22.5.8 provides that the taxpayer's EIN should be shown in the upper, right-hand corner of the Form 872. Since [REDACTED] is the taxpayer still in existence, its EIN, i.e., [REDACTED], should appear in the box at the upper, right-hand corner of the Forms 872.

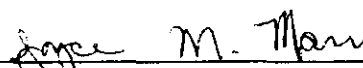
[REDACTED]'s address appears on the draft Forms 872; this is correct.

The "Corporate Name" in the signature block should read: [REDACTED]. The block should be signed by a current officer of [REDACTED] and the signature block should include the officer's name typed or printed and the officer's official title.

Please confirm that [REDACTED] is still in existence at the time the Forms 872 are signed.

Additionally, since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

This advisory opinion has been coordinated with the Office of Chief Counsel. Please contact the undersigned at (949) 360-2688 if you have any questions.

  
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JOYCE M. MARR  
Attorney

Attachments: 2 draft Forms 872